

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

June 4, 2008

No. 07-40955

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

FERNANDO GARCIA-GARCIA

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:06-CR-00221

Before JONES, Chief Judge, and WIENER and CLEMENT, Circuit Judges.

PER CURIAM:*

Defendant-Appellant Fernando Garcia-Garcia ("Garcia-Garcia") appeals the sentence he received for his guilty-plea conviction for illegal re-entry, in violation of 8 U.S.C. § 1326. The district court enhanced Garcia-Garcia's sentence by eight levels because it determined that his second state law conviction for possession of a controlled substance qualified as an "aggravated felony" under the sentencing guidelines. Garcia-Garcia contends that in light

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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of the Supreme Court's decision in *Lopez v. Gonzales*, 127 S. Ct. 625 (2006), his second state law conviction does not qualify as an aggravated felony.

Today, in *United States v. Cepeda-Rios*, No. 07-50731, we rejected precisely the same argument made by Defendant-Appellant in this appeal. For the reasons set forth in *Cepeda-Rios*, the sentence received by Garcia-Garcia is **AFFIRMED**.